

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MOSES & SINGER LLP,

Plaintiff,

-against-

STEPHEN N. WEISS,

Defendant.

Index No.: _____

**AFFIRMATION OF
PHILIPPE ZIMMERMAN**

PHILIPPE ZIMMERMAN, an attorney admitted to practice in the Courts of the State of New York, affirms under penalty of perjury:

1. I am a member of plaintiff, Moses & Singer LLP ("M&S"). I submit this affirmation in support of M&S's motion for summary judgment in lieu of complaint.

A. *The Outstanding Note*

2. M&S is a limited liability partnership with a principal office located at 405 Lexington Avenue, New York New York, 10174.

3. Upon information and belief, defendant, Stephen N. Weiss ("Defendant" or "Weiss"), is an individual who resides at 90 Prospect Terrace, Tenafly, New Jersey 07670.

4. M&S is the holder of a promissory note, dated November 16, 2012 (the "Note"), pursuant to which Defendant agreed to pay the principal amount of \$1,173,000.00, plus interest on the outstanding balance at the rate of 7% per annum until due, and then 9% per annum on any past-due principal and interest. A true and correct copy of the executed Note is attached hereto as **Exhibit A.**

5. The Note states that Defendant, “hereby **unconditionally promises to pay** to the order of M&S and its successors and assigns ... **ON DEMAND** the principal amount of this Note plus interest thereon at the rate specified below.” (Emphasis in original).

6. The Note also states, “If any action or other proceeding is brought against [Defendant] to collect this Note, the holder hereof shall be entitled to recover all court costs and reasonable expenses of collection and enforcement, including, without limitation, attorneys’ fees and disbursements (including but not limited to any attorneys’ fees of M&S, it being agreed that the standard rates of M&S as in effect from time to time shall be deemed to be reasonable rates).”

7. Pursuant to its terms, the Note and all issues “arising out of or relating to this note shall be governed by the internal laws of the State of New York.”

8. Further the Note provides, in relevant part, “Any legal action or proceeding concerning the validity, interpretation of enforcement of this Note or any matters arising out of or related to this Note shall be brought exclusively in the courts of the State of New York in the County of New York or ... for the Southern District of New York ... and [Defendant] hereby consents and submits to the exclusive jurisdiction of those courts in any such legal action or proceeding, waiving any objection to the propriety or convenience of such venues.”

B. M&S’s Demands for Payment and Defendant’s Failure to Make Payment

9. M&S formally demanded immediate payment (the “Demand”) under the Note by letter dated May 9, 2019 (the “Demand Date”). A true and correct copy of the Demand is attached hereto as **Exhibit B**.

10. In response to the Demand, Defendant contacted me and, among other things, promised to make a payment towards the demanded amount.

11. Notwithstanding his commitment, Defendant did not pay any portion of the amount owed as of the Demand Date.

12. By letter dated November 19, 2019, M&S requested payment of the then outstanding amount of \$1,741,126.00 (the “Second Demand”). A true and correct copy of the Second Demand is attached hereto as **Exhibit C**.

13. No payment has been received in response to the Second Demand.

C. Weiss Repeatedly Acknowledges His Debt to M&S

14. On repeated occasions since Weiss executed the Note, he has acknowledged his debt to M&S.

15. By letter dated on or about December 24, 2013 (the “December 2013 Letter”), Defendant acknowledged his obligation to M&S under the Note. The December 2013 Letter, which enclosed a check to M&S in the amount of \$10,000.00, memorializes Defendant’s commitment to make payments until his “**obligations are satisfied.**” (Emphasis added). A true and correct copy of the December 2013 Letter, along with a copy of the check for \$10,000.00, is attached hereto as **Exhibit D**.

16. On June 3, 2014, in response to my written inquiry concerning the status of payments to M&S, Defendant wrote me, “I would remind you that last year I did manage a token payment out of my income to show good faith and to show that **I recognize my obligation to M&S and that I intend to make good on it.**” (Emphasis added). A true and correct copy of the email thread between Defendant and me, including his email of June 3, 2014, is attached hereto as **Exhibit E**.

17. In April 2016, Weiss informed me, again in response to an inquiry regarding the status of payment, that he “will start to send [M&S] checks” beginning around the third week of

that month. A true and correct copy of the email I received from Defendant on April 2, 2016 is attached hereto as **Exhibit F**.

18. On or about April 21, 2016, Defendant made a payment to M&S in the amount of \$2,500.00.

19. On or about May 23, 2016, Defendant sent a check in the amount of \$2,000.00 to M&S. That payment was accompanied by a note stating, "Enclosed is a check for \$2000.00 to be applied toward principal on the referenced note." A true and correct copy of the May 23, 2016 letter is attached hereto as **Exhibit G**.

20. No further payments have been received from Defendant after May 23, 2016.

21. In response to the Demand, Weiss sent me a letter, dated June 10, 2019, which, among other things, proposes a potential method of collecting funds from a third-party to pay the Note. In that letter, Defendant wrote, "**I confirm that the signature on the Note is mine and I further agree to waive the right to assert against M&S any defense based on time bar to the extent any such defense may now exist in my favor with respect to said Note.**" (Emphasis added). A true and correct copy of Weiss's June 10, 2019 letter is attached hereto as **Exhibit H**.

22. To date, Defendant has paid only \$14,500.00 of the \$1,173,000.00 due and owing on the principal under the Note.

23. Pursuant to the Note, interest was to accrue from the date of the Note through the Demand Date at the rate of 7% per annum and at the rate of 9% per annum after the Demand Date. No payments towards the interest have been received.

24. Through November 22, 2019, the total amount due and owing on the Note is \$1,741,137.00, which is comprised of \$1,158,500 in principal and \$582,637.00 in interest. Interest continues to accrue at the rate of 9% per annum, \$407.63 per diem.

25. In light of the foregoing, I respectfully request that this court grant M&S's motion for summary judgment, and award such other and further relief as the Court may deem proper, just and equitable.

Dated: New York, New York
December 5, 2019



PHILIPPE ZIMMERMAN